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8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff, No. SA CR 15-36-CJC

14 v.

15 BOBBY HAMBY, GOVERNMENT'S SENTENCING POSITION

16 Defendant.

Date: June 13, 2016

Time: 10:00 a.m.

17 The government submits its sentencing position.

18 Date: June 3, 2016

19 /s/

20 GREGORY W. STAPLES
21 Assistant U.S. Attorney

1 **I. INTRODUCTION**

2 The government has no objections to the findings of the PSR.
3 For the reasons stated below, the government recommends a sentence of
4 41 months, restitution of \$1,257,628.55, three years of supervised
5 release, and a special assessment of \$200.
6

7 **II. BACKGROUND**

8 Defendant stipulated to the following factual basis as part of
9 his plea agreement.

10 The real estate investment scheme

11 Beginning in at least May 2008 and continuing to December 2011,
12 in Orange County, within the Central District of California,
13 defendant, both individually and through a business called B+E
14 Family Investments LLC, engaged in a scheme to defraud investors
15 with respect to the purchase, improvement, and resale of real
16 estate. Defendant told investors that he would use money
17 invested by them to purchase and improve real property, resell
18 the property at a profit, and share the profit with investors.
19 Defendant told investors that he would provide them with a note
20 and that he would secure their investments by placing the
21 investors' names on the deed. Defendant received approximately
22 \$2,460,000 from investors for use in the purchase, improvement,
23 and resale of real estate. Instead of using investors' money as
24 promised, defendant used most of the money from investors for
25 personal uses, including making phony return on investment
26 payments to existing investors, paying his own home mortgage,
27 and

1 dues at the Yorba Linda Country Club, car payments, bankruptcy
2 lawyers, restaurants, medical and dental bills, and department
3 and retail stores such as Nordstrom, Macy's, Home Depot, and
4 Costco. In furtherance of the scheme, defendant caused the
5 following to wire to occur in or affecting interstate commerce:
6

7 Count One

8 On February 10, 2011, a wire transfer of \$62,500 from the
9 account of victim M.Z. at Pacific Premier Bank to the account of
10 Real Time Escrow at City National Bank.

11 The laser equipment scheme

12 Beginning in or about November 2010 and continuing to May 2011,
13 defendant also solicited money from investors to purchase laser
14 equipment for his chiropractic business. Defendant solicited
15 money more than \$150,000 from investors with promises that it
16 would be used to purchase laser equipment. Instead, only
17 approximately \$5000 was spent towards the purchase of laser
18 equipment. The balance of the money was used by defendant for
19 personal expenses, including cash withdrawals, home mortgage
20 payments, private school tuition for defendant's children,
21 credit card bills, restaurants, and stores such as Nordstrom,
22 Loehmann's, and Kohl's. In furtherance of the scheme, defendant
23 caused the following to wire to occur in or affecting interstate
24 commerce:
25

26 Count Two

27 On May 13, 2011, a wire transfer of \$52,250 from the account of
28

1 victim J.S. at Pacific Premier Bank to account of B+E Family
2 Investments LLC at Bank of America.

3 In soliciting money for both schemes and using it as described
4 above, defendant acted with the intent to defraud. In so
5 acting, defendant caused at least 22 victims to lose
6 approximately \$1,801,410.

7 Since entry of the plea, Probation has determined the actual loss
8 amount to be \$1,257,628.55. The lower loss amount is based on money
9 defendant returned to victims.

10 **III. GUIDELINES CALCULATIONS**

11 The parties stipulated to the following Guidelines factors:

12 Base Offense Level: 7 U.S.S.G. § 2B1.1(a)(1)

13 Specific Offense
14 Characteristics

15 Loss > \$1 million: 16 U.S.S.G. § 2B1.1(b)(1)(I)

16 Adjustments

17 > 10 victims 2 U.S.S.G. § 2B1.1(b)(2)(A)

18 The parties are free to argue that additional specific offense
19 characteristics, adjustments, and departures under the Sentencing
20 Guidelines are appropriate.

21 Probation agrees with the base offense level of 7, and a 2-level
22 victim enhancement. Probation determined an actual loss of \$1.25
23 million that results in a 14-level enhancement under the 2015
24 Guidelines (as opposed to a 16-level enhancement under the 2014
25 Guidelines). The government agrees with Probation's calculations.

1 A base offense level of 7, a 14-level enhancement for loss, a 2-
2 level victim enhancement, and a 3-level reduction for acceptance of
3 responsibility yields a total offense level of 20. Based on a
4 criminal history category of I, the resulting sentence range is 33-41
5 months. Because of the impact on the victims in this case, the
6 government recommends a sentence of 41 months.¹
7

8 **IV. SECTION 3553 FACTORS**

9 A sentence of 41 months is no greater than necessary to achieve
10 the goals of § 3553. The loss in this case is on the low end of
11 fraud cases seen in federal court. But the impact on the victims is
12 no less severe. Several of the victims are elderly and have no way
13 to replace the money they lost to defendant. PSR ¶ 18.a ("I am 81
14 years old and no longer able to work."); 18.b ("I am 80 years old, no
15 longer able to work since suffering from a stroke in October 2014,
16 which immobilized my right leg and arm, forcing me to use a
17 walker."); 18.i ("As a widower living on a fixed income, I was
18 counting on the money I invested with Bobby Hamby for extra income
19 during my retirement years.")

21 The impact on the victims shows the offense in this case is
22 serious. A term of 41 months will provide a just punishment, promote
23 respect for the law, and provide for adequate deterrence. The
24 sentence should be commensurate with the harm to the victims. A

26 ¹ The plea agreement binds the government to a low-end
27 recommendation only if the total offense level is 22 or higher. Plea
28 Agreement ¶ 3.d. Because the offense level is 20, the government is
not bound to recommend a low end sentence.

1 number of victims will live out their lives under a cloud, as each
2 day brings worries over money, and the anger and other feelings that
3 flow from defendant's betrayal of their trust. The government does
4 not dispute that, given his age, defendant may be a low risk for
5 recidivism, but that is only one measure courts consider in imposing
6 a sentence. In addition, defendant's age also makes meaningful
7 restitution unlikely. Justice in this case - the need to impose a
8 just punishment - requires a sentence of 41 months.

10 **V. CONCLUSION**

11 For the foregoing reasons, defendant should be sentenced to a
12 term of 41 months in custody, three years of supervised release,
13 restitution of \$1,257,628.55, along with the other conditions
14 recommended by Probation.

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